



JUDGE SCHEINDLIN

Doc # 1

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RAUTUREAU-APPLE SHOES, S.A.S.,

Plaintiff,

-against -

TOOTSI PLOHOUND, INC. and LARRY
EVERSTON doing business as OTTO
TOOTSI PLOHOUND,

Defendants.

05 CV

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COMPLAINT

Plaintiff Rautureau-Apple Shoes, S.A.S., by its attorneys Nesenoff & Miltenberg, LLP, as
and for its Complaint, respectfully alleges as follows:

THE NATURE OF THIS ACTION

1. This is a diversity action for breach of contract and account stated for failure by buyer, a New York corporation in conjunction with its New York principal, to pay 183,630.42 Euros (approximately U.S. \$255,000) for goods sold and delivered on account by seller, a French corporation, in the period of January 24, 2002 to September 19, 2003.

THE PARTIES

2. Plaintiff Rautureau-Apple Shoes, S.A.S. ("Plaintiff") is a corporation that is organized under the laws of France and that has its main offices located at 2 rue des Boutons d'or, La Gaubretiere, 85130 France. Plaintiff manufactures and sells shoes for sale at retail.

3. Defendant Tootsi Plohound, Inc. is a corporation organized under the laws of the State of New York and maintains a principal business office at 413 West Broadway, New York City (Manhattan), New York 10012, in the Southern District of New York.

4. Defendant Larry Everston doing business as Otto Tootsi Plohound is an individual who has maintained a place of business at 413 West Broadway, New York City (Manhattan), New York 10012, in the Southern District of New York.

JURISDICTION AND VENUE

5. Jurisdiction is founded upon diversity of citizenship pursuant to 28 U.S.C. § 1332(a)(1),

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and the amount in controversy, exclusive of interest and costs, exceeds the sum of seventy-five thousand (\$75,000.00) dollars.

6. Venue lies in this district pursuant to 28 U.S.C. § 1391(a) because defendants maintain their principal place of business in this district and the claims asserted herein arose in this district.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

7. On or about January 24, 2002, Plaintiff sold, invoiced and had delivered on account to defendant Larry Everston doing business as Otto Tootsi Plohound two quantities of shoes: one for 19,514.00 Euros and a second one for 3,290.40 Euros. Subsequently, on February 6, 2002, March 6, 2002 and March 29, 2002, Plaintiff sold, invoiced and had delivered on account to defendant Larry Everston doing business as Otto Tootsi Plohound several quantities of shoes for a total amount of 58,175.40 Euros. From January 24, 2002, to July 25, 2002, defendant Larry Everston doing business as Otto Tootsi Plohound had purchased shoes from Plaintiff for a total amount of 110,679.80 Euros. From January 24, 2002, to July 25, 2002, defendant Larry Everston doing business as Otto Tootsi Plohound made no payments on the account with Plaintiff.

8. On July 25, 2002, and August 27, 2002, defendant Larry Everston doing business as Otto Tootsi Plohound made payments on the account with Plaintiff totaling U.S. \$40,000.

9. As a consequence of these payments by defendant Larry Everston doing business as Otto Tootsi Plohound and his assurances, on August 27, 2002 and September 30, 2002, Plaintiff sold, invoiced and had delivered on account to defendant Larry Everston doing business as Otto Tootsi Plohound three quantities of shoes: one for 33,068.90 Euros, a second one for 50,025.30 Euros and a third one for 36,183.40 Euros.

10. On October 17, 2002, April 28, 2003, and May 5, 2003, defendant Larry Everston doing business as Otto Tootsi Plohound made payments on the account with Plaintiff totaling U.S. \$30,000.

11. As a consequence of these payments by defendant Larry Everston doing business as Otto Tootsi Plohound and his assurances, on September 9, 2003, Plaintiff sold, invoiced and had delivered

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on account to defendant Tootsi Plohound, Inc. and defendant Larry Everston doing business as Otto Tootsi Plohound (collectively, "Defendants") a quantity of shoes for 69,899.50 Euros. Thus, over the period of January 24, 2002 to September 9, 2003, Plaintiff sold, invoiced and had delivered on account to defendant Tootsi Plohound, Inc. and/or defendant Larry Everston doing business as Otto Tootsi Plohound quantities of shoes totaling 299,856.90 Euros.

12. On February 2, 2004, May 6, 2004, May 14, 2004, December 17, 2004, Defendants made payments on the account with Plaintiff for the aforesaid shoes in the total amount of U.S \$17,000. These payments still left 183,630.42 Euros unpaid by defendant Tootsi Plohound, Inc. and/or defendant Larry Everston doing business as Otto Tootsi Plohound on the account with Plaintiff.

13. As a consequence of the failure of Defendants to make full payment of the account, counsel for Plaintiff contacted Defendants concerning the failure to make full payment. Defendants gave assurances that payment would be forthcoming; however, no further payments were made by Defendants.

14. On February 16, 2005, counsel for Plaintiff sent a demand letter to Defendants with a statement of account, seeking full payment of the outstanding amount on the account of 183,630.42 Euros. On March 16, 2005, an attorney for Defendants responded to counsel for Plaintiff, but thereafter did not return telephone calls.

AS AND FOR THE FIRST CAUSE OF ACTION
(For Breach of Contract)

15. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 14 as though fully set forth herein.

16. Defendants have breached the contract between Plaintiff and defendant Tootsi Plohound, Inc. and/or defendant Larry Everston doing business as Otto Tootsi Plohound to the damage of Plaintiff by failing to make full payment of the amount on account.

17. Plaintiff is entitled to damages in an amount to be determined at trial, but no less than the equivalent, in U.S. dollars, of 183,630.42 Euros (approximately U.S. \$255,000) before the

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addition of pre-judgment interest.

AS AND FOR THE SCOND CAUSE OF ACTION
(For Account Stated)

18. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 17 as though fully set forth herein.

22. Plaintiff sold and delivered goods to the account of defendant Tootsi Plohound, Inc. and/or defendant Larry Everston doing business as Otto Tootsi Plohound during the period of January 24, 2002 to September 19, 2003. To the damage of Plaintiff, Defendants have failed to pay, refused to pay and breached its contractual obligation to Plaintiff to pay Plaintiff for the aforesaid goods to the account of defendant Tootsi Plohound, Inc. and/or defendant Larry Everston doing business as Otto Tootsi Plohound.

23. Plaintiff is entitled to damages in an amount to be determined at trial, but no less than the equivalent, in U.S. dollars, of 183,630.42 Euros (approximately U.S. \$255,000) before the addition of pre-judgment interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands Judgment as follows:

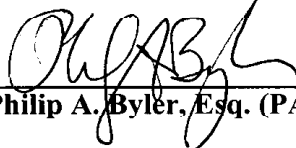
- i. On the First Cause of Action against Defendants, awarding money damages in an amount to be determined at trial, but no less than the sum of the equivalent, in U.S. dollars, of 183,630.42 Euros (approximately U.S. \$255,000), plus interest thereon at the statutory rate;
- ii. On the Second Cause of Action against Defendants, awarding money damages in an amount to be determined at trial, but no less than the sum of the equivalent, in U.S. dollars, of 183,630.42 Euros (approximately U.S. \$255,000), plus interest thereon at the statutory rate; and
- iii. Granting such other and further relief as to the Court deems just and proper,

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together with the fees, costs and disbursements of this action.

**Dated: New York, New York
May 6, 2005**

NESENOFF & MILTENBERG, LLP

By: 
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-and-

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